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## TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944<sup>45</sup>

No. 1026

44

THE UNITED STATES OF AMERICA, APPELLANT

vs.

AMERICAN UNION TRANSPORT, INC., D. C. ANDREWS  
& CO., INC., ATLANTIC FORWARDING CO., INC.,  
ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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FILED MARCH 8, 1945

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## INDEX

	Original	Print
Record from D. C. U. S., Southern New York.....	1	1
Petition.....	1	1
Exhibit "A"—Order of Commission instituting investigation, Aug. 21, 1942.....	17	11
Exhibit A-1—Order of Commission, Sept. 22, 1942.....	21	15
Exhibit A-2—Order of Commission, Dec. 1, 1942.....	23	16
Exhibit A-3—Order of Commission, Dec. 8, 1942.....	25	17
Exhibit B—Order of Commission, Jan. 14, 1943.....	27	19
Exhibit C—Form of questionnaire.....	30	23
Answer.....	31	24
Exhibit 1—Order of Commission, Feb. 26, 1943.....	35	26
Exhibit 2—Order of Commission, Apr. 13, 1943.....	36	27
Exhibit 3—Order of Commission, May 18, 1943.....	37	27
Exhibit 4—Form of questionnaire.....	39	29
Notice of motion for summary judgment.....	40	30
Affidavit of Maurice A. Krisel.....	42	31
Exhibit I—Letterheads used by four of plaintiffs.....	47	34
Exhibit II—Invoice from D. C. Andrews & Co.....	48	35
Exhibit III—Shipping instructions.....	49	Face 36
Exhibit IV—Invoice of Davies, Turner & Co.....	50	37
Notice of motion for restraining order.....	51	38
Affidavit of Herbert A. Byrne.....	53	39
Exhibit A—Letter, R. H. Hallett to Imperial Forwarding Co., Oct. 5, 1942.....	64	48
Exhibit B—Order of Commission, May 18, 1943.....	66	49

	Original	Print
Testimony of Harold C. Dow at hearing before Commission.....	70	53
Extract from minutes of meeting of U. S. Maritime Commission, Aug. 21, 1942.....	101	67
Memorandum from R. H. Hallett to Commission, Aug. 17, 1942.....	106	71
Affidavit of H. L. Allen.....	109	73
Statement of R. H. Hallett.....	111	73
Affidavit of R. H. Hallett.....	173	102
Notice of motion for reargument.....	179	105
Affidavit of R. H. Hallett.....	181	106
Exhibit I—Schedule setting forth answers of each plaintiff to questions 29, 30 and 31.....	187	109
Stipulation re judgment.....	198	117
Opinion, Swan, J., filed Nov. 30, 1944.....	200	119
Opinion, Swan, J., filed Nov. 30, 1943.....	201	119
Opinion on motion for reargument, filed March 8, 1944.....	204	124
Findings of fact and conclusions of law.....	207	126
Judgment.....	212	129
Petition for appeal.....	214	130
Assignment of error.....	215	231
Order allowing appeal.....	217	132
Notice to Attorney General of New York.....	218	133
Praecipe for transcript of record.....	219	134
Citation and service [omitted in printing].....	221	135
Clerk's certificate [omitted in printing].....	223	135
Stipulation and addition to record.....	225	135
Questionnaire.....	226	136
Statement of points to be relied upon and designation of record.....	231	138
Appellee's counter—designation of record.....	233	139
Order noting probable jurisdiction.....	234	139

In United States District Court, Southern District  
of New York

AMERICAN UNION TRANSPORT, INC., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

*Petition*

Filed Feb. 11, 1943

*To: The Honorable the Judges of the District Court of the United States, for the Southern District of New York:*

The American Union Transport, Inc., and other plaintiffs hereinafter more fully described, bring this, their petition, against the United States of America, and hereby sue to enjoin, set aside, suspend, and annul two certain orders, as hereinafter set forth, of the United States Maritime Commission (hereinafter called the "Commission"), and in support of said petition and prayer for injunctive relief, plaintiffs complain and say:

I

The plaintiffs are the following named:

(a) corporations of the State of New York, having their principal office and place of business within the Southern District of New York: American Union Transport, Inc., D. C. Andrews & Co., Inc., Atlantic Forwarding Co., Inc., Baker, Irons & Dockstader, Inc., Baltic Shipping Co., Inc., J. E. Bernard & Co., Inc., Bluefries-New York, Inc., A. P. Cofod & Co., Inc., Colony Shipping Co., Inc., Thos. Cook & Son-Wagons Lits, Inc., M. J. Corbett & Co., Inc., A. J. DeMay & Co., Inc., B. F. Downing & Co., Inc., Dumont Shipping Co., Inc., Byson Shipping Co., Inc., John H. Faunce New York, Inc., Freedman & Slater, Inc., The Gallie Corporation, P. A. Gaynar & Co., Inc., Gerhard & Hey Co., Inc., Globe Shipping Co., Inc., H. A. Gogarty, Inc., J. W. Hampton, Jr., & Co., Inc., W. Heimann International Transportation Service, Inc., E. Hennigson Co., Inc., Hensel, Bruckmann & Lorbacher, Inc., Hudson Shipping Co., Inc., John H. Hunter & Son, Inc., Inge & Company, Inc., Inter-Maritime Forwarding Co., Inc., International Forwarding Co., Inc., Karr, Ellis & Co., Inc., Lansen-Naëve Corp., Lunham & Reeve, Inc., Major Forwarding Co., Inc., Marks & Coyle, Inc., Meadows Wye & Co., Inc., Mohegan International Corporation, The W. P. Neth Co., Inc., New Netherland Co., Inc., A. E. Nydegger & Co., Inc., Norton &

Ellis of New York, Inc., Pitt & Scott Corporation, Premier Shipping Co., Inc., Rohner, Gehrig & Co., Inc., H. W. St. John & Company, R. J. Saunders & Co., Inc., W. O. Smith & Co., Inc., Milton Snedeker Corporation, United Shipping Corporation, Universal Transcontinental Corporation, Van Oppen & Co., Inc., Wedelmann & Godknecht, Inc., Daniel F. Young, Inc.

(b) foreign corporations: American Shipping Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of Illinois; Davies, Turner & Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey; F. E. Wallace & Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey; Intercontinental Forwarding, Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware; Judson, Sheldon Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware;

3 (c) copartnerships: Patrick A. Cavanaugh and Elizabeth L. Cavanaugh, copartners, doing business under the firm name and style of Cavanaugh Shipping Company; Ewald Kersten and Fred L. Wolf, copartners, doing business under the firm name and style of Kersten Shipping Agency; J. C. Maron, J. E. Krebs, and C. Schaefer, copartners, doing business under the firm name and style of Maron and Schafer;

(d) individuals: H. Zachary Bernstein, doing business under the registered trade name of H. Z. Bernstein Company; F. J. Errion and M. L. Errion, individuals, doing business under the registered trade name of Errion Company; Kingston Grodwohl, doing business under the registered trade name of L. Grodwohl & Son; Ernest Tornabell;

## II

All of the plaintiffs are engaged in the business of shippers' agents and freight brokers in the terminal area commonly known as the Port of New York, and are engaged in arranging, in the usual course of such business, and as agents for others, for insurance, cartage, warehousing, and other services incidental to and including the affreightment of merchandise consigned to and from points within the United States, from and to points outside thereof; the services of plaintiffs and their responsibilities to shippers in connection therewith being confined, in the ordinary course of business, to the terminal area, aforesaid, and plaintiffs do not assume responsibility for delivery thereof at destinations;

4 the transportation and affreightment of the said merchan-

dise taking place partly within and partly without the United States. The plaintiffs are not persons subject to the Shipping Act of 1916 and the various acts amendatory thereof (Title 46, U. S. Code, Chapter 23).

### III

This suit is brought under the provisions of Title 28, Sections 41 (28), 43-48 of the United States Code, which confers on the District Courts of the United States jurisdiction of suits to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission; and Title 46, Section 830 of the United States Code, which provides that the venue and procedure in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the United States Maritime Commission shall be the same as suits in regard to orders of the Interstate Commerce Commission; and further providing that such suits may be maintained in any District Court having jurisdiction of the parties. The venue is laid in the Southern District of New York, pursuant to such section.

The orders of the Commission herein sought to be enjoined, set aside, and suspended, were made in a proceeding instituted upon the Commission's own motion, and not upon the petition of the parties. The venue is laid in the Southern District of New District of New York. The plaintiffs enumerated in paragraph I (a) hereof each have their principal offices and places of business in the Southern District of New York.

### IV

The proceeding before the Commission in which the orders herein complained of were made was a general investigation instituted by the Commission on its own motion, designated

5 as "Port of New York Freight Forwarders Investigation."

Docket No. 621. A large number of persons, including the plaintiffs herein, who had never previously been alleged or construed to be within the jurisdiction of the Commission, were named respondents in said general investigation. A true and correct copy of the order of the Commission, instituting said general investigation, and dated August 21, 1942, is hereto annexed, marked "A," and made a part hereof; and copies of the Commission's supplemental orders, adding and eliminating respondents in said proceeding, dated respectively September 22, 1942, December 1, 1942, and December 8, 1942, are hereto annexed, marked "A-1," "A-2," and "A-3" and made a part hereof, as though fully set forth at length.



## V

The said order dated August 21, 1942 (Exhibit A hereto) recites that a certain defunct corporation (not a party to this action), described as "Foreign Freight Contractors, Inc.":

(1) " \* \* \* issues contracts under guise of bills of lading, although not a carrier purports to establish freight rates; and engages in other acts and practices (not therein specified) with respect to contracts \* \* \*; and the method of assessing and collecting its charges \* \* \* which appear to be in violation of Section 17 of the Shipping Act of 1916, as amended;"

and

(2) " \* \* \* that the public interest requires a general inquiry to determine the extent of the existence of the said practices (without specifying the same) among all other forwarders \* \* \* subject to said Act, and the lawfulness of said practices under Section 17 thereof;"

and upon such recitals:

"It is ordered, That the Commission upon its own motion and without formal pleading enter upon an investigation concerning the lawfulness of the rules, regulations, practices and operations of said forwarders named herein, with a view toward making such order or orders or taking such other action in the premises as may be warranted by the record."

It was further provided in the said order that such investigation be assigned for hearing at such times and places as the Commission may hereafter direct.

6

## VI

Thereafter the Commission circulated to the respondents named in the said proceeding, including the plaintiffs herein, a questionnaire, copy of which is hereto annexed, marked "C," and made a part hereof, which said questionnaire was, on information and belief, thereafter answered and filed with the Commission. The said questionnaire, among other things, propounded an interrogatory to these plaintiffs in the following language:

"Do you carry on the business of forwarding in connection with common carriers by water in foreign commerce?"

The plaintiffs, without knowledge of the import of the said question or of the kind or nature of the business which it was necessary to carry on, or the character of relationship with a common carrier by water in foreign commerce, which it was neces-

sary to maintain, in order to fall within the said definition, answered the question in the affirmative. The affirmative answers made by the plaintiffs to the said question were erroneous.

## VII

The Commission thereafter, on December 9th and 10, 1942, held hearings in the City of New York, in said investigation, designated by it as Docket No. 621, and offered in evidence the aforesaid questionnaires referred to in paragraph VI hereof, which were then and there accepted by the presiding examiner. Under the provisions of Section 1.07 (d) of the Rules of Procedure of the Commission, the said questionnaires and the confidential information therein contained, became subject to public inspection, and the Commission's examiner ruled accordingly.

## VIII

On December 10, 1942, the aforesaid hearing was adjourned sine die, upon motion of the attorney for the Commission, upon his statement to the presiding examiner that he had then presented all of the testimony he was able to present.

7 Thereafter the said attorney for the Commission, caused a certain additional questionnaire, prepared by him and entitled in the aforesaid investigation Docket No. 621, to be delivered to certain of the plaintiffs herein and thereupon demanded that the same be answered and returned to the Commission to be used by him in preparation for further public hearings and to be offered in evidence thereat, in such manner that the confidential matter therein contained relating to the private business of American exporters and shippers passing through the Port of New York, would be made known to their domestic and foreign competitors.

## IX

On January 14, 1943, the Commission, on its own motion, entered its further order under the provisions of Section 21 of the Shipping Act (Title 46, Section 820 U. S. Code), annexing a copy of the aforesaid questionnaire, with the docket number and title thereon deleted, and making response thereto by each of the persons mentioned therein mandatory within a period of thirty days, elapsing February 13, 1943, under penalty of being fined \$100 per day each for every day of default, as provided in said section.

A copy of the said order is hereto annexed, marked "B," and made a part hereof. It provides in part that the persons named in the appendix thereto be:



(a) " \* \* \* required to file with the Commission, at its office at 45 Broadway, New York, N. Y., a report of all information as set forth in the form hereto attached and marked Exhibit 'A,' said report to be a true, accurate, and complete record of all individual forwarding transactions taken from their books, records, and documents billed during January and February, 1940; June and July, 1941; and November and December, 1942;" and

(b) that it be "verified before a notary and \* \* \* filed as aforesaid within thirty days of this order \* \* \*."

Upon information and belief, the said order (Exhibit B hereto) was served on eighty-five persons, firms, and corporations, and the aggregate daily penalties on default in answering is \$8,500.

## X

Plaintiffs and each of them allege that the said order of the Commission dated August 21, 1942 (Exhibit A hereto) is unlawful and void, exceeds the regulatory powers of the Commission, and is arbitrary and capricious in that:

A. The plaintiffs herein (by the Commission designated as "respondents" in said proceeding) are not "other persons subject to this Act," to wit: the Shipping Act of 1916 (Title 46, Chapter 23, U. S. Code); not being persons engaged in or carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water, as defined in Sections 1 and 17 of the Shipping Act of 1916 (Title 46, Sections 801 and 816, U. S. Code); and are not subject to the jurisdiction nor required to respond to the orders of the Maritime Commission of the United States.

B. That the recital and finding of the Commission in the said order (Exhibit A hereto) that it appears "That each of the persons named in Appendix A herein carry on the business of forwarding in foreign commerce and that each of them is an 'other person subject to this Act,'" is arbitrary and capricious, there being no evidence to sustain such finding before the Commission on August 21, 1942, when the said order (Exhibit A hereto) was made.

C. By the terms of the order, the Commission undertakes, upon its own motion, to conduct a general inquiry in "the public interest" to determine whether certain unspecified and undefined practices exist among the respondents, and if said practices do exist, the "lawfulness" thereof. It is acting "without formal pleading" and without complaint or allegation by it or any other person of a violation of the Shipping Act of 1916 (Title 46, Chapter 23, U. S. Code). There is no allegation of

any specific matter which might be made the subject of a complaint. The Commission is without power to conduct general investigations in the public interest, without complaint or formal pleading, being limited to the investigation of violations of the Act, alleged by it or others under the provisions of Section<sup>o</sup> 22, 23, 27 thereof (Title 46, Sections 821, 822, 826 U. S. Code); and the investigation initiated by said order is an unlawful assumption of jurisdiction and authority by it.

D. By its terms the order provides for an investigation into the rates and charges of the respondents named therein, including the plaintiffs, and the method of assessing and collecting same. The Commission has no authority or power of regulation over the rates and charges of "other persons" subject to the Shipping Act of 1916, under Section 17 thereof (Title 46, Section 816, U. S. Code), and its attempt to inquire into them is an unlawful assumption of jurisdiction and authority by it.

E. By its terms, the investigation initiated thereby is in part (1) for the purpose of issuing an order of the Commission based on such investigation; and, in part, (2) for the purpose of "taking such other action in the premises as may be warranted by the record." The Commission is without authority, upon the conclusion of an investigation to take any action, except to state its conclusions and decisions and enter an order thereon, within the limits of its powers, and the said investigation is unlawful to the extent that it exceeds such purpose.

F. That the investigation initiated thereby includes within its scope an inquiry into the contracts made by the plaintiffs, as  
10 alleged in paragraph II, relative to the transportation of goods from and to points within the United States to and from points outside thereof, which transportation, insofar as it takes place within the United States is within the exclusive jurisdiction of the Interstate Commerce Commission, under the Interstate Commerce Act (Title 49, Section 1002 (a) (6) U. S. Code), and the Maritime Commission is denied power or jurisdiction over such transportation (Title 46, Section 832, U. S. Code).

## XI

Plaintiffs and each of them allege that they are not engaged in foreign commerce, and are not constitutionally subject to regulation by the Congress, under the provisions of Article I, Section 8 of the Constitution of the United States.

## XII

The plaintiffs and each of them allege that the order of the Commission dated January 14, 1943 (Exhibit B hereto) is un-

lawful and void, exceeds the regulatory powers of the Commission, and is arbitrary and capricious, for the following reasons:

A. The persons to whom the said order was directed are not "other persons subject to this Act," to wit: The Shipping Act of 1916 (Title 46, Chapter 23, U. S. Code) as more fully set forth in paragraph X A hereof.

B. By its terms, the order relates in part to transportation entirely within the United States and subject to the exclusive jurisdiction of the Interstate Commerce Commission, as more fully set forth in paragraph X F hereof.

C. It is not intended to inform the Commission, within its lawful powers of facts to which it is entitled in the administration of the Shipping Act, but is intended to perform the office of an unlimited and unrestricted bill of discovery and inspection of plaintiffs' books and papers, in the investigation, Docket No. 621, which inspection is unauthorized by the Shipping Act (Title 46, Section 826, U. S. Code).

D. It requires a disclosure, without the consent of the shippers and consignees thereof, of information concerning the nature, kind, quantity, destination, consignee, and routing of property tendered and delivered to common carriers in foreign commerce at the Port of New York, to the detriment of and prejudice of such shippers and in violation of Section 20 of the Shipping Act of 1916 (Title 46, Section 286, U. S. Code).

E. It requires information from plaintiffs' books and records, to wit: their charges to customers, unrelated to any matter which the Commission is entitled, under the Constitution of the United States, or the law, to investigate, or concerning which it may require plaintiffs to report. The Commission has no power of regulation over the rates and charges of "other persons" subject to the Shipping Act of 1916; and the order constitutes an unreasonable search and seizure of plaintiffs' papers, in violation of Amendment IV to the Constitution of the United States.

F. It does not require the plaintiffs to furnish a periodical or special report within the meaning of Section 21 of the Shipping Act of 1916, but requires a detailed analysis of facts not completely shown in their books and records, over an excessively long period of time, which facts can only be compiled at great expense and which will have the effect of imposing upon plaintiffs an unauthorized penalty, and they will suffer irreparable injury and damage for which there is no remedy at law.

G. That the period of time limited therein is unreasonably short for plaintiffs to compile the information and prepare the forms to comply therewith. It is impossible for plaintiffs to comply with said order within the time limited.

H. It does not set forth any definite requirements for compliance therewith and is so indefinite and uncertain in its terms that plaintiffs are and will continue to be unable to determine what answers they must give in order to comply with said order. The order contains no instructions and does not, either by definition or application to particular situations, inform plaintiffs what is meant by the various questions, although its effect will be to make them subject to heavy penalties provided in the Shipping Act if they fail to comply therewith.

### XIII

Plaintiffs further allege that said order (Exhibit B hereto) is unlawful and void in that:

A. A number of plaintiffs herein are and have been for some time past engaged in arranging for the affreightment and transportation of merchandise and munitions of war consigned to certain foreign countries, the defense of which the President has deemed vital to the defense of the United States as provided by law (Title 22, Section 412, U. S. Code). The said order requires that plaintiffs furnish and disclose information concerning the said shipments, to wit: the name and address of the shipper, the nature of the shipment, the marks thereon, the name of the line, the date and number of the bill of lading and details thereof. The said information when so furnished will be offered in evidence and will be subject to public inspection. Plaintiffs are advised and verily believe that they will thereby, in time of war, and with reason to believe it will be used to the injury of the United States, aid, in transmitting to enemy citizens, information relating to the National Defense, in violation of Title 50, Sections 31 and 32, U. S. Code. Plaintiffs aver, upon information and belief, that some of the said shipments are now in transit upon the high seas.

B. The said order (Exhibit B thereto) was issued by the Commission on January 14, 1943, and the Commission seeks thereby to collect information upon identical items from ten or more persons, other than federal employees. Upon information and belief, prior thereto and prior to the adoption of the form of questionnaire annexed to said order, the Commission failed and neglected to submit the same to the Director of the Budget and obtain his statement that he did not disapprove it. The said order and questionnaire thereto annexed have been unlawfully promulgated by the Commission in violation of the Federal Reports Act, approved December 24, 1942, Section 5 thereof (Public Law 83, 77th Congress, Chapter 811, Second Session), and plaintiffs are not required to respond thereto.

## XIV

Plaintiffs and each of them allege as to both of the aforesaid orders (Exhibits A and B hereto) that should they be required to obey the same, even if said order should later be set aside as unlawful, they would be forced publicly to disclose valuable private information concerning their own business and the private and confidential business and affairs of their customers, to their own and the said customers' great prejudice and damage; they would be required to expend large sums of money collecting information to answer the questions propounded by the order of January 14, 1943 (Exhibit B, hereto); they would be required to neglect their business affairs for long periods of time; from all of which plaintiffs would suffer irreparable injury and damage for which there is no remedy at law. Plaintiffs, although they

believe and are advised by counsel that the said orders are unlawful and void; may not, nevertheless, safely disregard the same, for if the said order should thereafter be held valid, plaintiffs and each of them would be subject to the heavy penalties of \$100 per day, for each day of violation, as provided in the Shipping Act of 1916.

## XV

Each of the plaintiffs enumerated in paragraphs I (c) and (d) hereof allege that the said order (Exhibit B hereto) constitutes an unreasonable search and seizure of their papers and effects and compels them to be witnesses against themselves in a criminal case, in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

All of the matters herein alleged, plaintiffs and each of them offer to prove.

Wherefore, plaintiffs, being without adequate remedy at law, respectfully pray:

First. That upon the filing of this petition, the Presiding Judge of this Court shall call to his assistance in the hearing and determination of this cause, two other Judges, of whom at least one shall be a Circuit Judge.

Second. That process may issue against the defendant, the United States of America:

Third. That after not less than five days' notice to the United States Maritime Commission and to the Attorney General of the United States, as provided by law, a hearing shall be held, and an interlocutory injunction be issued, staying and suspending the said orders of the United States Maritime Commission;

Fourth. That upon final hearing of this case, a permanent injunction shall be issued decreeing that said orders of the Com-

15 mission are null and void, and are set aside, suspended, and  
annulled, and that their enforcement, execution, and op-  
eration shall forever be enjoined, and that the United States  
shall forever be restrained from taking any steps, or instituting,  
or further prosecuting any proceeding to enforce the said orders.

Fifth. That this Court shall grant to the plaintiffs such other  
and further relief as by it may be deemed proper in the premises.

Respectfully submitted,

HAROLD L. ALLEN,

Harold L. Allen,

*Solicitor for Plaintiffs, Office & Post Office Address: No.  
70 Pine Street, Borough of Manhattan, City of New  
York.*

Dated New York, February 10, 1943.

16 [Duly sworn to by Herbert A. Byrne; jurat omitted in  
printing.]

17 *Exhibit A to petition*

#### ORDER

At a Session of the United States Maritime Commission, held at  
its office in Washington, D. C., on the 21st day of August, A. D.  
1942

No. 621

#### PORT OF NEW YORK FREIGHT FORWARDER INVESTIGATION

It appearing, That each of the persons named in Appendix A  
herein carry on the business of forwarding in foreign commerce  
and that each of them is an "other person subject to this Act"  
within the meaning of that term as used in sections 1 and 17 of  
the Shipping Act, 1916, as amended;

It further appearing, from information before the Commission  
that Foreign Freight Contractors, Inc., in connection with the  
receiving, handling, storing, or delivery of cargo and freight in  
foreign commerce, issues contracts under guise of bills of lading,  
although not a carrier, purports to establish freight rates; and  
engages in other acts and practices with respect to contracts it  
makes with shippers and the method of assessing and collecting its  
charges, all of which appear to be in violation of section 17 of the  
Shipping Act, 1916, as amended; and

It further appearing, That the public interest requires a general  
inquiry to determine the extent of the existence of the said prac-  
tices among all other forwarders in the port of New York subject



to said Act, and the lawfulness of said practices under section 17 thereof;

It is ordered, That the Commission upon its own motion and without formal pleading enter upon an investigation concerning the lawfulness of the rules, regulations, practices, and operations of said forwarders named herein, with a view toward making such order or orders or taking such other action in the premises as may be warranted by the record.

18 It is further ordered, That all forwarders named in Appendix A herein be, and they are hereby, made respondents in this proceeding.

It is further ordered, That a copy of this order be served upon each of said respondents; and

It is further ordered, That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, JR.,  
Secretary.

19

*Appendix A*

Allen, John D.	Brauner & Co.
America Bluefriesvroom Inc.	Bridgette & Co., Inc.
American Despatch Agency.	Broderick & Co., Edw. P.
American Express Co.	Brown & Reese.
American Shipping Co.	Bruemmer & Ackerman.
American Union Transport Co.	Burdett, Inc., Daniel H.
Andrews, D. C.	Bryant & Heffernan, Inc.
Asche & Co., Inc., Chas. H.	Byrnes & Lowrey.
Atlantic Forwarding Co., Inc.	Calwell & Co., Inc.
Atlas Forwarding Co.	Carlsen, H. R.
Austin Baldwin & Company.	Carter & Caulfield.
Baker, Irons & Dockstader, Inc.	Carter Shipping Service, L. M.
Bane & Co., William.	Carney, M. J.
Baltic Shipping Co.	Cavanaugh Shipping Co.
Barr Shipping Co.	Chelsea Forwarding Co.
Behring Co., P. R.	Coford, A. F.
Benkhart & Co., F. J.	Colony Shipping Co., Inc.
Bernard & Co., Inc., J. E.	Comstock & Theakston, Inc.
Berner & Co., A. V.	Consmiller, Inc., L. A.
Bernstein, H. Z.	Cook & Sons, Thos. Wagons
Black & Geddes	Ltd., Inc.
Block & Co., John.	Copeland Shipping Inc.
Bluefries, New York, Inc.	Copex Co., Inc.
Bolton & Mitchell, Inc.	Corbett & Co., M. J.
Bowen, A. E.	Cox & Fahner.

Davies, Turner & Co.  
 Dearborn & Co.  
 DeMay & Co., Inc., A. J.  
 D. L. & W. R. R.  
 Doherty, George F.  
 Dorf & Co., Inc., H. S.  
 Downing & Co., Inc., R. F.  
 Draeger Shipping Co., Inc.  
 Drew Shipping Co.  
 Dumont Shipping Co., Inc.  
 Dunlap, Alpers & Mott.  
 Dyson Shipping Co., Inc.  
 Eagle Commercial Corp.  
 Eberlein, J. G.  
 Errion Co.  
 Excel Shipping Co., Inc.  
 Export-Import Services, Inc.  
 Farris & Co., Inc., M.  
 Faunce Inc., John H.  
 Foreign Shipping Co., Inc.  
 Franklin & Co.  
 Freedman & Slater, Inc.  
 Freightling Corp. of America.  
 Fulton Freight Forwarding  
 Co.  
 Gallagher & Asche, Inc.  
 Gallie Corporation.  
 Gaskell, Fred P. Co., Inc.  
 Gavin, J. J.  
 Gaynor & Co., Inc., P. A.  
 Gehard & Hey Co., Inc.  
 General Shipping & Trading  
 Co.  
 General Transport Co., Inc.  
 Gertzen, Kerer Co., Inc.  
 Globe Shipping Co., Inc.  
 Godwins Samuel & Sons.  
 Gogarty, H. A. Inc.  
 Gonrand Shipping Co., Inc.  
 Grant & Co., Inc., C. S.  
 Gray, R. M., Inc.  
 Greene, R. L.  
 Grodwohl, G. & Son.  
 Hampton, J. W. Jr., & Co., Inc.

Happel, Charles.  
 Hayes & Streeter.  
 Hayden & Co., C. A.  
 Hemmeworth-Kerner, Corp.  
 Heiman W. International  
 Transportation Service, Inc.  
 Henjes, Frederick Jr., Inc.  
 Hennington, E. Co., Inc.  
 Hensel Bruckmann & Lor-  
 bacher, Inc.  
 Hill, F. Murray.  
 Hilton & Son.  
 Hirschbach & Smith, Inc.  
 Holt & Co., C. J.  
 Hudson Forwarding & Ship-  
 ping Co.  
 Hunter & Son, Inc.  
 Hunter, T. T.  
 Hurley, Richard J.  
 Independent Forwarding Co.  
 Inge & Co., Inc.  
 Inter-Maritime Forwarding  
 Co.  
 International Forwarding Co.  
 Jarrett & Willenbacher.  
 Judson Sheldon Corp.  
 Karr, Ellis & Co., Inc.  
 Keating & Co., Inc., W. R.  
 Keer, Maurer & Co., Inc.  
 Kersten Shipping Agency.  
 Kilroy, John F.  
 Kraemer, F. L. & Co.  
 Kramer & Hauser.  
 Lambert & Barrows.  
 20 Lansen-Naeve, Corp.  
 Leading Forwarders Inc.  
 Leonhardt & Bush.  
 Lippelgoes, George Co.  
 Lo Curto & Funk.  
 Love, E. C.  
 Luigi Serra, Inc.  
 Lunham & Moore International  
 Corp.  
 Lunham & Reeve, Inc.

Maguire, Philip Co.	Pomerance, S. H. Co., Inc.
Majestic Shipping & Forwarding Co.	Powell, C. H. Co.
Majör Forwarding Co.	Premier Shipping Co.
Markland Landau Co.	Puerto Rico Shippers Service.
Marks & Coyle Inc.	Redde Forwarding Co., Inc.
Marks, Ernest E.	Reliance Shipping Service.
Maron & Schaefer.	Reynolds, J. L. Freight Corp.
Marti, F. & Co., Inc.	Rex & Reynolds.
Masiller & Co.	Richards Shipping Co.
Massie & Co.	Rietman-Pilcer Co.
Massce & Co., Inc.	Robinson, H. W. & Co.
Masters & Co., J. W.	Rogers, I. F.
McGrath, & Co., T. J.	Rogers, John O.
Meadows, Wye & Co., Inc.	Rohner, Gehrig & Co.
Michelson & Sternberg.	Russpade, C. F. & Co.
Mohegan International Corp.	Ryder, C. C. & Co.
Moody & Co., H. E.	Santos, E. L. & Co.
Morris, A. J.	Saunders, R. J. & Co., Inc.
Moritz, Leonard W. & Co.	Schneider Bros. Co., Inc.
Munn & Jenkins.	Schmidt, Pritchard & Co. Inc.
Murray & Co., A. J.	Seven Seas Mercantile Transportation Co., Inc.
Murphy J. J. & Co.	Shippers Storage Co., Inc.
Nelson Fred O. & Co., Inc.	Shore, John J.
Neth, W. P. & Co., Inc.	Smith, Theodore B. & Co.
New Netherland Co., Inc.	Smith, W. O. & Co., Inc.
Niebrugge & Day Inc.	Snedeker, Milton Corp.
North American Forwarding Co.	Stern, Steiner & Co.
Norton & Ellis of New York Inc.	S. John, H. W. & Co.
N. Y. & Overseas Shipping Co.	Taub, Hummel & Schnall, Inc.
Nydegger & Co., A. E.	Thomas & Pierson, Inc.
Oceans Shipping Co., Inc.	Timm, Charles H.
Old Colony Forwarding Co.	Titan Shipping Co., Inc.
Overton & Co.	Tornabell, Ernest.
Pacific & Atlantic Shippers Association.	Transatlantic Shipping Agency.
Paragon Forwarding Company	Transship, Inc.
Peason & Co.	Triad Shipping Co.
Perry, Ryer & Co.	United Shipping Corporation.
Person & Weidhorn.	United States Forwarding Company.
Peterson, C. E.	United States Freight Co.
Phoenix Shipping.	Universal Transcontinental Corp.
Pitt & Scott Corporation.	Vandergrift & Co.
	Van Oppen & Co., Inc.

Victory Shipping Co.	Willis & Cupitt.
Wallace, F. E. & Co., Inc.	Wilson, A. S.
Ward, James E. & Co.	Wood, J. B.
Webbhal-Service.	Wynne, Thomas J.
Wedemann & Godneclit, Inc.	Young, Daniel P. Inc.
Wehling, R. C. & Co.	Young, William G.
Weiss Forwarding Co.	Foreign Freight Contractors,
Werkle & Calgano.	Inc.
Whitehall Shipping Co.	

21

*Exhibit A-1 to petition*

## SUPPLEMENTAL ORDER

At a Session of the United States Maritime Commission, held at its office in Washington, D. C., on the 22nd day of September, A. D. 1942

## PORT OF NEW YORK FREIGHT FORWARDER INVESTIGATION

The Commission having by its order of August 21, 1942, entered upon an investigation concerning the lawfulness under section 17 of the Shipping Act, 1916, as amended, of rules, regulations, practices and operations of forwarders named in the appendix to said order; and

It appearing, That Aetna Forwarding Co., All Transport & Storage Co., American Commercial Shipping Co., W. J. Brynes of New York, Inc., Caragol-Clarke Co., Inc., Columbo Company, Continam Shipping Co., Inc., Cosmos Shipping Co., Inc., W. H. Emig, Excel Shipping Co., Franklin Forwarding Co., P. J. Hanrohan, Inc., M. Harrison & Co., Inc., L. S. Hoetzolt & Co., Hoole Service Co., Imperial Forwarding Co., Intercontinental Forwarding, Inc., Knickerbocker Carriers, Inc., Ernest E. Marks Co., F. J. Markwalter, National Shipping & Forwarding Co., New York Forwarding Co., Porto Rican Express Co., Rex Forwarding Co., New York Forwarding Co., Porto Rican Express Co., Rex Forwarding Co., Ropke & Otto, Royal Shipping Co., John E. Saffran Co., Tice & Lynch, Inc., Universal Carloading Co., Wells, Fargo & Co., Young & Glenn, Inc., are, and each of them is, carrying on the business of forwarding in the Port of New York of foreign commerce, and is an "other person subject to this Act" within the meaning of that term as used in sections 1 and 17 of the Shipping Act, 1916, as amended:

It is ordered, That said Aetna Forwarding Co. and others named in the preceding paragraph be, and each of them is hereby named

respondent in this investigation, and that copy of the Commission's order of August 21, 1942, together with copy of this supplemental order, be served upon each of the said additional respondents; and

It appearing further, That, due to recent discontinuances in business, changes in names, and for other reasons, certain respondents named in the Commission's order of August 21, 1942, are no longer in fact responsive to respondents in this proceeding concerned;

It is further ordered, That John D. Allen, D. L. & W. R. R., Ernest E. Marks, Puerto Rico Shippers Service, and Wm. G. Young, be, and each of them is hereby, eliminated as respondents in this proceeding.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,

*Secretary.*

23

*Exhibit A-2 to petition*

## SECOND SUPPLEMENTAL ORDER

At a Session of the United States Maritime Commission, held at the office in Washington, D. C., on the 1st day of December, A. D. 1942

No. 621

### PORT OF NEW YORK FREIGHT FORWARDER INVESTIGATION

The Commission having by its order of August 21, 1942, entered upon an investigation concerning the lawfulness under section 17 of the Shipping Act, 1916, as amended, of rules, regulations, practices, and operations of forwarders named in the appendix to said order; and

It appearing, That Bruemmer & McGrath, John H. Faunce, New York, Inc., Foreign Shipping Service Co., Inc., Ira Furman Co., Hudson Shipping Co., Inc., Independent Forwarding & Car-leading Co., Inc., H. P. Lambert Co., Pan-Atlantic, Inc., Wells, Fargo & Co. of Cuba, William G. Young & Co., Inc. are, and each of them is, carrying on the business of forwarding in the Port of New York of foreign commerce, and is an "other person subject to this Act" within the meaning of that term as used in sections 1 and 17 of the Shipping Act, 1916, as amended;

It is ordered, That said Bruemmer & McGrath and others named in the preceding paragraph hereof be, and each of them is hereby, named respondent in this investigation, and that copy of the Commission's order of August 21, 1942, together with copy of supple-

mental order of September 22, 1942, and copy of this second supplemental order, be served upon each of said additional respondents; and

It appearing further, That, due to recent discontinuance in business, changes in names, and for other reasons, certain respondents named in the Commission's orders of August 21 and September 22, 1942, are no longer in fact responsive as respondents in this proceeding concerned;

It is further ordered, That William Bane & Co., Edw. P. 24 Broderick & Co., Bruemmer & Ackerman, Comstock & Theakston, Inc., J. G. Eberlein, John H. Faunce, Inc., Foreign Shipping Co., Inc., Freightling Corp. of America, Samuel Godwins & Sons, C. J. Holt & Co., Inc., Hudson Forwarding & Shipping Co., T. T. Hunter, Richard J. Hurley, Independent Forwarding Co., Jarrett & Willenbacher, Lambert & Barrows, Leonhardt & Bush, Lunham & Moore, International Corp., Ernest E. Marks Co., J. W. Masters & Co., National Shipping & Forwarding Co., Old Colony Forwarding Co., Redde Forwarding Co., Inc., Ropke & Otto, Shippers Storage Co., Inc., Titan Shipping Co., Inc., United States Freight Co., James E. Ward & Co., and Wells, Fargo & Co., be, and each of them is hereby eliminated as respondents in this proceeding.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,

Secretary.

25

*Exhibit A-3 to petition*

### THIRD SUPPLEMENTAL ORDER

At a Session of the United States Maritime Commission, held at its office in Washington, D. C., on the 8th day of December, A. D. 1942

No. 521

#### PORT OF NEW YORK FREIGHT FORWARDER INVESTIGATION

The Commission having by its order of August 21, 1942, entered upon an investigation concerning the lawfulness under section 17 of the Shipping Act, 1916, as amended, of rules, regulations, practices and operations of forwarders named in the appendix to said order; and

It appearing, that said persons, firms and corporations named in the appendix herein are, and each of them is, carrying on the business of forwarding in the Port of New York of foreign commerce, and is an "other person subject to this Act" within the



meaning of that term as used in sections 1 and 17 of the Shipping Act, 1916, as amended:

It is ordered, That said persons, firms, and corporations be, and each of them is hereby, named respondent in this investigation, and that copy of the Commission's order of August 21, 1942, together with copies of supplemental orders of September 22, 1942, and December 1, 1942, and copy of this third supplemental order, be served upon each of said respondents.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,  
Secretary.

Air Express International Agency.	Fox & Co., James.
Acme Fast Freight, Inc.	Frieme, A. L.
Airsea Shipping Co.	Galbally, J. J., Co.
Aeolian Shipping Co.	Garcia & Osorio.
Allied World Wide Forwarding Co.	General Export Service.
American European Shippers.	Gerlach, F. C., & Co.
Arguinbeau & Co. N. Y.	Gilbert, S.
Beck & Politzer.	Haig, Ch. H.
Bergey Shipping Service.	Hagemann, F. W.
Blundell Shipping Co.	Halperin Shipping Co.
Cary & Co.	Hamilton Forwarding Co.
Collins & Co. W. F.	Harveyson, J. A.
Cohen & Mann.	Hickey, John A.
Commercial Dispatch.	Hinricks & Peersal.
Continental Express Co.	Hopgood & Co.
Cunningham, J. A.	Hornbostal, C. S., Co.
Dailey, Stewart J.	Hull, John A., Co.
Devoy, H. B., & Co.	Hunter, R. J.
Dominquez Co.	Immediate Transportation Co.
Dow, Frank P.	Interspeed Agency.
Downing, T. D.	Irwin, James D., & Co.
Downing, T. F.	Israel, Charles.
Erskine Freight Forwarding Co.	Jenkisson, G. T.
Export Chemical Shipping Co.	Kamen, Howard.
Farrell, J. F.	Kaufman Co.
Fenton, A. W., Co.	Keiser, Russ E.
Fijux, G. F.	Kirk, Fred.
Foster, Wm. A., & Co., Inc.	Kronfeld & Saunders.
	Lang, Sidney.
	Lee, Charles.
	Manly, Winslow.

Mitchell, John.	State Forwarding & Shipping Co.
Mitchell Shipping & Forwarding Co.	Stauff, August F., & Co.
Mutual Forwarding Co.	Sternberg & Co.
Olympic Shipping Co.	Suarez Trading Co.
Petry, P. H.	Swiss American Shipping Agency.
Redicker Bros.	Traders Service Corporation.
Salter, A. W.	Tyson, Donald B.
Schmid, A. N.	Ueland Walter T.
Sellers, C. W., Transportation Co.	Uhlmann & Co.
Siess, George P.	Ward, J. L., & Co.
Smith, Charles T.	Weitzel & Reinhard.
Harry Solodow.	Wingate W. & Johnston.
Stahl, Frederick L.	Wood Niebuhr & Co.

27

*Exhibit B to petition*

## ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 14th day of January, A. D. 1943

IN THE MATTER OF CHARGES, RULES, REGULATIONS, PRACTICES AND OPERATIONS OF FREIGHT FORWARDERS AT THE PORT OF NEW YORK

It appearing, That the individuals, firms and corporations named in the appendix hereto attached and made part hereof are "other persons" subject to the Shipping Act, 1916, as amended; and that full and complete information as to their charges, rules, regulations, practices and operations is necessary to the proper administration of the regulatory provisions of said Act;

It is ordered, Pursuant to the powers conferred upon the Commission by Section 21 of the Shipping Act, 1916, as amended, that the said persons named in the appendix hereto, be, and they are hereby notified and required to file with the Commission, at its office at 40 Broadway, New York, N. Y., a report of all information as set forth in the form hereto attached and marked Exhibit A said report to be a true, accurate and complete record of all individual forwarding transactions taken from their books, records and documents billed during January and February, 1940; June and July, 1941; and November and December, 1942; and

It is further ordered, That the aforesaid report be in printed, typewritten or mimeographed form; that it be verified before a notary and signed by an officer of said persons, and that it be filed

as aforesaid within thirty days from the date of this order; and

It is further ordered, That a copy of this order be served by registered mail upon each of said persons named in the appendix hereto attached at their respective addresses therein stated.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,  
*Secretary.*

## 28

## APPENDIX

American Shipping Co., 10 Bridge St., New York, N. Y.  
 American Union Transport, Inc., 33 Rector St., New York, N. Y.  
 Andrews, D. C., & Co., Inc., 27 Water St., New York, N. Y.  
 Atlantic Forwarding Co., Inc., 45 Pearl St., New York, N. Y.  
 Atlas Forwarding Co., 2 Rector St., New York, N. Y.  
 Baker, Irons & Dockstader, Inc., 8-10 Bridge St., New York, N. Y.  
 Baltic Shipping Co., Inc., 10 Bridge St., New York, N. Y.  
 Behring Shipping Co., 8-10 Bridge St., New York, N. Y.  
 Bernard, J. E., & Co., Inc., 27 Pearl St., New York, N. Y.  
 Bernstein, H. Z., Co., 38 Pearl St., New York, N. Y.  
 Block, John, & Co., Inc., 16 Bridge Street, New York, N. Y.  
 Bluefries-New York, Inc., 44 Whitehall St., New York, N. Y.  
 Bolton & Mitchell, Inc., 79 Wall St., New York, N. Y.  
 Bryant & Heffernan, Inc., 80 Broad St., New York, N. Y.  
 Caldwell & Company, Inc., 50 Broad St., New York, N. Y.  
 Cavanaugh Shipping Co., 10 Bridge St., New York, N. Y.  
 Cofod, A. F., & Co., Inc., 24 State St., New York, N. Y.  
 Colony Shipping Co., Inc., 75 West St., New York, N. Y.  
 Cook, Thos., & Son—Wagons-Lits Inc., 221 Broadway, New York, N. Y.  
 Corbett, M. J., & Co., Inc., 10 Bridge St., New York, N. Y.  
 Davies, Turner & Co., 10 Bridge St., New York, N. Y.  
 DeMay, A. J., & Co., Inc., 28 Water St., New York, N. Y.  
 Downing, R. F., & Co., Inc., 16 Bridge St., New York, N. Y.  
 Dumont Shipping Co., Inc., 11 Broadway, New York, N. Y.  
 Dyson Shipping Co., Inc., 10 Pearl St., New York, N. Y.  
 Errion Company, 17 State St., New York, N. Y.  
 Farris, M., & Co., Inc., 10 Bridge St., New York, N. Y.  
 Faunce, John H., New York, Inc., 17 State St., New York, N. Y.  
 Foreign Shipping Service Co., Inc., 10 Bridge St., New York, N. Y.  
 Freedman & Slater, Inc., 8 Bridge St., New York, N. Y.  
 Gallagher & Ascher, Inc., 44 Whitehall St., New York, N. Y.  
 Gallie Corporation, The, 50 Broad St., New York, N. Y.  
 Gaynar, P. A., & Co., Inc., 44 Whitehall St., New York, N. Y.  
 Gerhard & Hey Co., Inc., 44 Whitehall St., New York, N. Y.

- Globe Shipping Co., Inc., 11 Broadway, New York, N. Y.  
 Gogarty, H. A., Inc., 15 Moore St., New York, N. Y.  
 Grodwohl, L. & Son, 72 Cortlandt St., New York, N. Y.  
 Hampton, J. W., Jr., & Co., Inc., 17 Battery Place, New York, N. Y.  
 Heilmann, W., International Transportation Service, Inc., 24 State St., New York, N. Y.  
 Hennigson, E., Co., Inc., 10 Bridge St., New York, N. Y.  
 Hensel, Bruckmann & Lorbacher, Inc., 11 Broadway, New York, N. Y.  
 Hirschbach & Smith, Inc., 44 Whitehall St., New York, N. Y.  
 Hoole Service Co., Inc., 35 South William St., New York, N. Y.  
 Hudson Shipping Co., Inc., 17 State St., New York, N. Y.  
 Hunter, John H., & Son, Inc., 21 West St., New York, N. Y.  
 Inge & Company, Inc., 29 Broadway, New York, N. Y.  
 Intercontinental Forwarding, Inc., 34 Bridge St., New York, N. Y.  
 Inter-Maritime Forwarding Co., Inc., 38 Pearl St., New York, N. Y.  
 International Forwarding Co., Inc., 44 Whitehall St., New York, N. Y.  
 Judson Sheldon Corporation, 19 Rector St., New York, N. Y.  
 Karr, Ellis & Co., Inc., 10 Bridge St., New York, N. Y.  
 Keer, Maurer Co., Brown Bldg., 4th and Chestnut Sts., Philadelphia, Pa.  
 Kersten Shipping Agency, 24 State St., New York, N. Y.  
 Lansen-Naeve Corporation, 15 Whitehall St., New York, N. Y.  
 Lamham & Reeve, Inc., 10 Bridge St., New York, N. Y.  
 Major Forwarding Co., Inc., 15 Moore St., New York, N. Y.  
 Marks & Coyle, Inc., 17 State St., New York, N. Y.  
 Maron & Schaefer, 11 Broadway, New York, N. Y.  
 29 Marti, F., & Co., Inc., 44 Beaver St., New York, N. Y.  
 Meadows, Wye & Co., Inc., 10 Bridge St., New York, N. Y.  
 Mohegan International Corporation, 17 State St., New York, N. Y.  
 Nelson, Fred O., Company, Inc., 79 Wall St., New York, N. Y.  
 Neth, W. P., Co., Inc., The, 44 Whitehall St., New York, N. Y.  
 New Netherland Co., Inc., 95 Broad St., New York, N. Y.  
 Norton & Ellis of New York, Inc., 80 Broad St., New York, N. Y.  
 Nydegger, A. E., & Co., Inc., 11 Broadway, New York, N. Y.  
 Pitt & Scott Corporation, 25 Beaver St., New York, N. Y.  
 Premier Shipping Co., Inc., 115 Broad St., New York, N. Y.  
 Rogers, John C., & Co., Inc., Drexel Bldg., Philadelphia, Pa.  
 Rohner, Gehrig & Co., Inc., 15 Moore St., New York, N. Y.  
 Santos, E. L., & Co., Inc., 7 Water St., New York, N. Y.  
 Saunders, R. J. & Co., Inc., 24 Stone St., New York, N. Y.  
 Sellers Transportation Co., Inc., 22 Whitehall St., New York, N. Y.

Seven Seas Mercantile Transport Co., Inc., 15 Moore St., New York, N. Y.

Smith, W. O. & Co., Inc., 32 Water St., New York, N. Y.

Snedeker, Milton, Corp., 44 Whitehall St., New York, N. Y.

St. John, H. W., & Co., 18 Pearl St., New York, N. Y.

Tornabell, Ernest, 21 West St., New York, N. Y.

United Shipping Corporation, 24 State St., New York, N. Y.

Universal Transcontinental Corp., 40 Rector St., New York, N. Y.

Van Oppen & Co., Inc., 18 Bridge St., New York, N. Y.

Wallace, F. E., & Co., 44 Whitehall St., New York, N. Y.

Wedemann & Godknecht, Inc., 100 Broad St., New York, N. Y.

Wilson, A. S., Inc., 120 Greenwich St., New York, N. Y.

Young, Daniel F., Inc., 10 Bridge St., New York, N. Y.

*Exhibit 6 to Petition*  
**EXHIBIT A—UNITED STATES MARITIME COMMISSION<sup>1</sup>**  
**Docket #621**

**INVESTIGATION FREIGHT FORWARDERS PORT OF NEW YORK**

Freight Forwarder:		1		2	3	4	5	6
Shipment: A. Forward- ers No. B. Marks. C. Office No.	S. S. Line: A. Name. B. B/L No. C. Office No.	Inland Freight		Cartage & Lighterage	Local Warehousing	Consular Blankets	Consular Fees	Messenger
		A. Rail. B. Over- land. C. Water. D. Express.	E. In trans- it. F. Storage G. Hauling. D. Waiting.	A. Cartage B. Tolls. C. Lighter- age. D. Waiting.	A. Storage. B. Hauling.			A. Fees. B. Travels.
& Tele- graph	Postage & Notary	2		10	11	12	13	14
		Insurance		Banking & Financing	Ocean Freight	Miscellaneous	Forwarding Fees and Service Charges	Commissions
Billed	Ad- vanced	Billed		Billed	Billed	Billed	Billed	Received
		A. Marine. B. War.	A. Banking Charge. B. Collect C. Advancing	A. Freight. B. Sampl- ing. C. Heavy lift.	E. Repair. F. Packing.	A. Through B.L. B. Expenses charged to customer. C. Transla- tions made by other for- warders & others.	A. Prepa- ration of B.L. B. Prepa- ration of other docu- ments. C. Miscella- neous services.	A. From Ocean carriers. B. From Inland carriers. C. From others.
Billed	Ad- vanced	Billed		Billed	Billed	Billed	Billed	% Received
		Billed		Billed	Billed	Billed	Billed	% Received

and accurate record of all forwarding transactions taken from the books, records, and documents of the company billed during the period Jan. Feb. 1939, Mar.-Apr. 1941.

By an officer of the forwarder - Verified before a notary.

Matter marked 1, 2, and 3 deleted from questionnaire accompanying January 14, 1943, order.



## In United States District Court

[Title omitted.]

*Answer*

Filed June 17, 1943

The defendant herein, United States of America, by Howard F. Corcoran, United States Attorney for the Southern District of New York, answers the petition herein as follows:

First. Denies any knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the petition marked "II"; and alleges that the plaintiffs are persons subject to the Shipping Act, 1916, as amended.

Second. Denies any knowledge or information sufficient to form a belief as to whether the plaintiffs enumerated in paragraph "I (a)" of the petition have their principal offices and places of business in the Southern District of New York, and admits the other allegations contained in the paragraph of the petition marked "III."

Third. Admits the allegations contained in the paragraph of the petition marked "IV" and refers to Exhibits "A," "A-1," "A-2," and "A-3" annexed to the petition for the terms of the orders referred to in said paragraph; except that it alleges that the plaintiffs have been and now are subject to the Shipping Act, 1916, as amended, and within the jurisdiction of the United States Maritime Commission (hereinafter referred to as the "Commission").

32 Fourth. Admits the allegations contained in the paragraph of the petition marked "V" and refers to Exhibit "A" annexed to the petition for the terms of the order referred to in said paragraph.

Fifth. Denies each and every allegation contained in the paragraph of the petition marked "VI," except that it admits that the Commission circulated a questionnaire, annexed to the petition as Exhibit "C," and that the plaintiffs answered the interrogatory set forth in said paragraph in the affirmative.

Sixth. Admits the allegations contained in the paragraph of the petition marked "VII" and refers to the Rules of Procedure of the Commission for the provisions of Section 1.07 (d) referred to in said paragraph.

Seventh. Admits the allegations contained in the paragraph of the petition marked "VIII"; except that it alleges that whether the answers to the questionnaire referred to in said paragraph would be offered in evidence at any further hearing would depend

on the nature of the answers to said questionnaire; and further alleges that said evidence would be available to other persons only in accordance with the Rules of Procedure of the Commission.

Eighth. Admits the allegations contained in the paragraph of the petition marked "IX," and refers to Exhibit "B" annexed to the petition for the terms of the order referred to in said paragraph; and alleges that the time for the petitioners to furnish the answers to the questionnaire mentioned in said paragraph was first extended to April 15, 1943 and thereafter further extended to June 1, 1943. Copies of the orders of the Commission, dated February 26, 1943 and April 13, 1943 respectively, are annexed hereto as Exhibits "1" and "2."

33 Ninth. Denies each and every allegation contained in the paragraph of the petition marked "X," except that it refers to Exhibit "A" annexed to the petition for the provisions of the order referred to in said paragraph.

Tenth. Denies each and every allegation contained in the paragraphs of the petition marked "XI," "XII," "XIV," and "XV."

Eleventh. Admits the allegations contained in the paragraph of the petition marked "XIII-A" and refers to Exhibit "B" annexed to the petition for the terms of the order mentioned in said paragraph; except that it alleges that whether the information required by Exhibit "B" would be offered in evidence would depend upon the nature of the answers in response thereto, and that such answers would be made available to other persons only in accordance with the Rules of Procedure of the Commission.

Twelfth. Denies each and every allegation contained in the paragraph of the petition marked "XIII-B"; except that it admits that prior to the adoption of the form of the questionnaire annexed to Exhibit "B" the Commission failed to submit same to the Director of the Budget and obtain his statement that he did not disapprove it, and alleges that such submission was not required pursuant to the Federal Reports Act.

#### SECOND DEFENSE

Thirteenth. The petition fails to state a claim against the defendant upon which relief can be granted.

#### THIRD DEFENSE

Fourteenth. The plaintiffs have not been injured by any provisions of the order annexed to the petition as Exhibit "A," nor have they been required to perform or refrain from performing any act, and accordingly, this court has no jur-

isdiction to enjoin enforcement or execution of the terms of said order.

## FOURTH DEFENSE

Fifteenth. On the 18th day of May 1943 the Commission vacated and set aside the order of January 14, 1943, and, pursuant to Section 21 of the Shipping Act, 1916, as amended, made its order requiring the respondents named in the appendix thereto to furnish certain information therein set forth. The Director of the Bureau of the Budget approved the form and contents of the questionnaire annexed to said order of May 18, 1943. Accordingly, the plaintiffs are not required to furnish any information pursuant to the order of January 14, 1943 (Exhibit B to the complaint) and may not seek to enjoin the enforcement thereof. The order of May 18, 1943 is annexed hereto as Exhibit "3" and the questionnaire referred to therein is annexed hereto as Exhibit "4."

Wherefore, the defendant prays that the petition herein be dismissed, together with the costs and disbursements of this action.

Dated New York, N. Y., June 15, 1943.

HOWARD F. CORCORAN,

*United States Attorney for the Southern District of New York, Attorney for Defendant.*

By: MARVIN M. NOTKINS,

Marvin M. Notkins,

*Assistant United States Attorney, Office and P. O.  
Address: United States Court House, Foley Square,  
Borough of Manhattan, City of New York.*

35

*Exhibit 1 to answer*

## ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 26th day of February, A. D. 1943

IN THE MATTER OF CHARGES, RULES, REGULATIONS, PRACTICES AND OPERATIONS OF FREIGHT FORWARDERS AT THE PORT OF NEW YORK

Upon consideration of requests made for extension of the time for compliance with the order entered herein, dated January 14, 1943, and certain respondents to said order having instituted a suit in the District Court of the United States, for the Southern

District of New York, to set aside and annul said order, and good cause appearing:

It is ordered, That said order of January 14, 1943, requiring compliance therewith within thirty (30) days from the date thereof, as modified by order dated February 4, 1943, so as to require such compliance on or before March 15, 1943, be and it is hereby further modified so as to require compliance therewith on or before April 15, 1943; and

It is further ordered, That the extension granted herein is without prejudice to the rights of the respondents named in said order of January 14, 1943, to apply for a further extension thereof.

By the Commission.

[SEAL]

(Sgt.) W. C. PEET, Jr.,

Secretary.

36

*Exhibit 2 to answer*

# ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 13th day of April, A. D. 1943

IN THE MATTER OF CHARGES, RULES, REGULATIONS, PRACTICES and OPERATIONS OF FREIGHT FORWARDERS AT THE PORT OF NEW YORK

It is ordered, That the order of January 14, 1943, as modified, be, and it is hereby, further modified so as to require compliance therewith on or before June 1, 1943.

By the Commission.

[SEAL]

(Sgt.) W. C. PEET, Jr.,

Secretary.

37

*Exhibit 3 to answer*

# ORDER

At a Session of the United States Maritime Commission, held at its office in Washington, D. C., on the 18th day of May, A. D. 1943

No. 621

PORT OF NEW YORK FREIGHT FORWARDER INVESTIGATION

It appearing, That full and complete information as to the charges, rules, regulations, practices, and operations of respondents named in the appendix which is attached hereto and made

part hereof is required for use in connection with the proceeding herein and is necessary to the proper administration of the regulatory provisions of the Shipping Act, 1916, as amended;

It further appearing, That the Commission, by its order dated January 14, 1943, as amended, ordered the said respondents except Gondrand Shipping Co., Inc., Massce-Barnett Co., Inc., Phoenix Shipping Co., Inc., and Victory Shipping Co., Inc., to furnish certain information as set forth in Exhibit A to said order; and

It further appearing, That the Director of the Bureau of the Budget has approved revised Appendix A, which is attached hereto and made a part hereof;

It is ordered, That the said order of January 14, 1943, be, and it is hereby, vacated and set aside;

It is further ordered, Pursuant to the powers conferred upon the Commission by Section 21 of the Shipping Act, 1916, as amended, that said respondents named in the appendix hereto, be, and they are hereby, notified and required to file with the Commission; at its office at 45 Broadway, New York, N. Y., a report of all information as set forth in Exhibit A, attached hereto, said report to be a true, accurate and complete record of 105 individual forwarding transactions taken from their books, records, and documents as follows: 35 of which were billed consecutively commencing January 1, 1940; 35 billed consecutively commencing June 1, 1941, and 35 billed consecutively commencing November 1, 1942;

It is further ordered, That the aforesaid report be in printed, typewritten or mimeographed form; that it be verified before a notary and signed by respondent or an officer of said respondent if a corporation, and that it be filed as aforesaid within 45 days from the date of this order; and

It is further ordered, That a copy of this order be served by registered mail upon each of said respondents named in the appendix hereto attached at their respective addresses therein stated. By the Commission.

[SEAL]

(Sgd.) W. C. PEET, Jr.,

*Secretary*

## Docket #621

# PORT OF NEW YORK FREIGHT FORWARDER INVESTIGATION

Budget Bureau No. 62-43004. Approval Expires Dec. 31, 1947

Foreign Freight Forwarder:

Address:

Customer.		Shipment		S. S. Line: A. Name. B. B. L. No.	Inland Freight		Cartage & Lighterage		Local Warehousing		Consular Blanks	
A. Name. B. Address.		A. Forwarders No. B. Marks. C. Office No.			A. Rail. B. Overland. C. Water. D. Express. Advanced	E. In transit. F. Storage. G. Handling. Billed	A. Cartage. B. Tolls. C. Lighterage. D. Waiting. Advanced	Billed	A. Storage. B. Handling. Advanced	Billed	Advanced	Billed
5		6		7		8		9		10		
Consultant Fees		Messenger		Telephone & Telegraph		Postage & Notary		Insurance		(Banking & Financing)		
Advanced	Billed	A. Fees. B. Travels. Advanced	A. Telephone—Out-of-Town. B. Telegraph. C. Cable. Advanced	Billed	Advanced	Billed	Advanced	Billed	A. Marine. B. War. Advanced	Billed	Advanced	Billed
11		12		13		14						
Ocean Freight		Miscellaneous		Forwarding Fees and Service Charges		Commissions						
A. Freight. B. Sampling. C. Heavy Lift.	E. Repair. F. Packing. Billed } Advanced	A. Through B. L. B. Expenses Chgd. to Customer. C. Translations. D. Charges Made By Other Forwarders & Others. Advanced	A. Preparation of B. L. B. Preparation of Other Documents. C. Miscellaneous Services.	Billed		% Received		\$ Received		\$ Received		
Signed—By the Forwarder or an Officer if a Corporation—Verified before a Notary.												

Signed—By the Forwarder or an Officer if a Corporation—Verified before a Notary.	Advanced	Billed



[Title omitted.]

*Notice of motion for summary judgment*

Filed March 8, 1944

SIR: Please take notice that on the pleadings herein, the annexed affidavit of Maurice A. Krisel, sworn to the 2nd day of July 1943, and the exhibits annexed thereto, together with the record of certain testimony had before G. O. Basham, Examiner designated by the United States Maritime Commission, at hearings held on December 9th and 10th, 1942 in a proceeding designated "Port of New York Freight Forwarder Investigation, Docket No. 621," and the exhibits received in evidence at said hearings, the undersigned will move the Honorable Thomas W. Swan, Honorable Alfred C. Coxe and the Honorable Francis G. Caffey, constituting a special court appointed pursuant to a certain order dated February 12, 1943, on the 15th day of July 1943, in Room 506 of the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, at 2:30 in the afternoon of said day, or at such time and place as the aforesaid Court may designate, for an order directing that summary judgment be entered in favor of the defendant on the ground that the petition fails to state facts sufficient to constitute a cause of action and that the pleadings on file, the affidavit and exhibits hereto annexed and the record of testimony and exhibits hereinabove referred to, show that there is no genuine issue as to a material fact and that the defendant is entitled to judgment as a matter of law, and for such other and further relief as to the Court may seem just and proper.

Dated New York, N. Y., July 2, 1943.

Yours, etc.

HOWARD F. CORCORAN,

*United States Attorney for the Southern District of New York, Attorney for Defendant, Office & P. O. Address, United States Court House, Foley Square, Borough of Manhattan, New York, New York.*

To:

HAROLD L. ALLEN, Esq.

*Attorney for Petitioners,*

*30 Rockefeller Plaza, New York, N. Y.*

*In United States District Court*

[Title omitted.]

*Affidavit of Maurice A. Krisel*

STATE OF NEW YORK.

*County of New York, Southern District of New York, ss:*

Maurice A. Krisel, being duly sworn, deposes and says:

I am a Senior Attorney employed by the War Shipping Administration and I am in charge of the investigation sought to be enjoined by the plaintiffs in the above proceeding, having been assigned thereto by the General Counsel of the United States Maritime Commission (hereinafter called the Commission), under arrangements for the interchange of personnel between the two agencies. I am thoroughly familiar with all the facts and circumstances with regard thereto. This affidavit is submitted in support of a motion for summary judgment made on behalf of the defendant, and in opposition to the plaintiffs' motion for a temporary injunction.

On August 21, 1942, the Commission, pursuant to the Shipping Act, 1916, as amended (46 U. S. C. §§ 801-842) instituted a general investigation, on its own motion, concerning the lawfulness of the rules, regulations, practices, and operations of certain freight forwarders named in its order, as supplemented, copies of which are annexed to the petition as Exhibits "A," "A-1," "A-2" and "A-3." The purpose of the investigation was to make such order or orders or to take such other action as may be warranted by the record. This investigatory order was made on the basis of information indicating that a corporation known as Foreign Freight Contractors, Inc., a company doing the same type of business as the plaintiffs, was engaged in practices which appeared to be in violation of the Shipping Act, 1916, as amended, and detrimental to the commerce of the United States, leading the Commission to the conclusion that it was in the public interest to conduct a general inquiry to determine the extent of such unlawful practices among all other freight forwarders in the Port of New York subject to the Act. In addition to the foregoing, other information was at hand and numerous complaints had been received regarding practices prevalent in the industry.

After the issuance of the initial order, the Commission sent to all the respondents named therein, a questionnaire, a copy of which is annexed to the petition as Exhibit "C." The information sought to be obtained concerned the various practices

of the respondents and among the questions propounded was the following:

"2. Do you carry on the business of forwarding in connection with common carriers by water in foreign commerce?"

All the plaintiffs answered the question in the affirmative.

After the receipt of the questionnaire, a brief ex parte investigation was made by the Commission, and subsequently public hearings were held in Brooklyn, New York on December 9th and 10th, 1942. There will be handed to the Court on the argument of the motion, a copy of the minutes taken at the hearings

and the exhibits received in evidence therein. As a result  
44 of the information adduced at the hearings and in order to obtain time to continue compiling the data necessary for the successful continuation thereof, the investigation was adjourned sine die.

Thereafter deponent on behalf of the Commission entered upon a study of the freight forwarding industry in connection with off-shore steamer service out of the Port of New York and determined as a result thereof that in view of the number of parties to the investigation, and the innumerable phases and ramifications of the industry, the task would be interminable without the cooperation of the freight forwarders themselves. Accordingly, a schedule setting forth the required data was prepared by deponent, and after consultation with the Director of the Division of Regulation and the General Counsel of the Commission, was delivered to the counsel for the plaintiffs, who thereafter advised deponent that the plaintiffs would furnish none of the information requested. Thereupon, on January 14, 1943, the Commission issued its order (Exhibit "B" to the petition) annexing a schedule and requiring the plaintiffs to file the answers thereto by February 14, 1943. The time to furnish the answers was extended to April 15, 1943, and then to June 1, 1943. On May 18, 1943, the Commission vacated and set aside its order on January 14, 1943, and issued a new order (Exhibit "3" to the answer) requiring substantially the same information but limiting the answers to 105 individual forwarding transactions. The new questionnaire (Exhibit "4" to the answer) bears the approval of the Director of the Bureau of the Budget.

Further to substantiate the contention of the Government that the plaintiffs carry on the business of forwarding in connection with a common carrier by water as defined in the Act, there  
45 are annexed hereto (Exhibit I) letterheads used by four of the plaintiffs. These examples indicate that the plaintiffs hold themselves out to the public as freight forwarders and are typical of the type of representations made by all those engaged

in the industry. It will be noted that Globe Shipping Co., Inc. is described as "Freight Forwarders and Brokers"; A. E. Nydegger & Company utilizes the description "International Freight Forwarders"; R. J. Saunders & Co., Inc. refers to its business as that of "Export Freight Contractors"; and Judson-Sheldon Corporation mentions "Foreign Freight Forwarders." There is also annexed an invoice from D. C. Andrews & Co., Inc. (Exhibit II), likewise described as "Foreign Freight Forwarders," in connection with a shipment from New York to Brazil per the S. S. Etna, setting forth the various items for which charges are made. The shipping instructions appearing on the reverse of the invoice are also annexed (Exhibit III). Paragraph 12 of those instructions is as follows:

"The Company, in fixing charges for freight and other services, shall have the right to charge rates in excess of those charged by any and all carriers and other agencies selected by the Company to transport and deal with the goods, and the difference between the rates and charges made by such carriers and agencies and those made by the Company shall be considered as part of the Company's profit or compensation for its services. The Company's compensation shall also include all brokerage, commissions, profits and sums received by the Company from Carriers, Insurers and others in connection with the shipment. The Company shall have the option in assessing or fixing charges for freight, insurance and other items in which it may include its profits, of basing such charges on the weights, measurements, values and other information furnished by the Sender."

An examination of the invoice shows that it is impossible for the shipper to determine which portion of each charge represents moneys actually advanced by the forwarder and what portion represents profits by the forwarder on each item.

There is also annexed (Exhibit IV) a similar invoice by Davies, Turner & Co., referred to as "Freight Forwarders to all Parts of the World," representing a shipment from New York to Ecuador per S. S. Huemul. Each of the plaintiffs conducts business with foreign countries and the industry utilizes practically every steamship line operating out of the Port of New York.

On the pleadings, exhibits and this affidavit, deponent respectfully submits that the plaintiffs are within the purview of the Act and accordingly are subject to investigation by the Commission, and that the petition should be dismissed and judgment directed in favor of the defendant.

MAURICE A. KRISSEL. (Sgd.)  
Maurice A. Krisel.

Sworn to before me this 2nd day of July 1943.  
EDWARD M. FOX, Notary Public.

Cable: Judshel. New York, Chicago  
Representatives Thruout the World

**JUDSON SHELDON CORPORATION**

**FOREIGN FREIGHT FORWARDERS, FREIGHT BROKERS & CONTRACTORS—  
CUSTOMS BROKERS**

Judson Freight Forwarding Co. Established 1873. G. W.  
Sheldon & Company. Established 1870.

Executive and General Offices, 19 Rector St., New York, N. Y.,  
U. S. A.

Boston, Baltimore, Philadelphia, St. Louis, Mobile, Chicago,  
Los Angeles, New Orleans, Seattle, Houston, San Francisco.

APRIL 15, 1943.

Telephone: Bowling Green 9-9066  
9-9067

Cable Address "Anydegger"

**A. E. NYDEGGER & COMPANY**

**INCORPORATED**

Customs Clearance Arranged.

Codes: Bentley's A. B. C. 6th Edition.

Swiss American Shipping Agency

International Freight Forwarders—Export and Import Freight  
Contractors .

11 BROADWAY

NEW YORK, N. Y.

Established 1903

Cable Address: Kronsauud.

Telephone Whitehall 4-0395.

R. J. SAUNDERS & Co., INC.

EXPORT FREIGHT CONTRACTORS

Customs Brokers

24 Stone Street, New York

Telephones 7292  
Digby 4-7293  
7294  
7295  
7296  
7297

11 Broadway

No.

NEW YORK, 8/14/41.

Mr. Herman Cohen & Co., 374 Broadway, N. Y. C.

To GLOBE SHIPPING Co., Inc., Dr.

FREIGHT BROKERS AND FORWARDERS

Custom House Brokers

Regular Services To and From All Parts of the World

Waybill No. 9991. Shipped per S-S *Carrillo* on 8/15/41 from N. Y.; Consigned to order of Antonio Chaljub, Cartagena, Colombia.

48 *Exhibit II*

Established 1884

Freight Brokers, Contractors.

Custom House Brokers—Foreign Freight Forwarders

D. C. ANDREWS & Co., INC.

27-29 Water Street

NEW YORK

12/2/42.

In account with Bernau & Co., Inc., 320 Fifth Avenue, New York City.



D. C. A. Ref. 50475. Shippers Ref. 1304. Shipping Instructions Dated -----

Shipment of 1 Ctn. Per S. S. *Etna*. Shipped about ----- Consigned to or by Magazin Segadaes, Rio de Janeiro, Brazil.

Description of Charges		Amount
Ocean Freight	Cubic Feet @ Per Spec Min.	\$3.00
Ocean Freight	Cubic Feet @ Per	
Ocean Freight	Lbs. @ Per	
Ocean Freight	Lbs. @ Per	
Foreign Port and Government Charges, Prop.		
Consular Fees	Blank Consular Forms	3.85
Preparation and handling Consular Invoice, Notary, Translation, etc.		.75
Certification of Commercial Invoices		.50
Messenger Service to Steamship Co., Merchants Ass'n., Consular Office, etc.		
Inland Railroad Freight and Charges		
Insurance—Marine \$75.00 @ 17% Marine & War		12.75
Insurance		
Arranging Insurance under Consignee's or Shipper's policy, Messenger service, etc.		
Transfer in New York		
Transfer in New York		
Preparation and handling Bill of Lading		2.50
War-Time Formalities		
Custom's Clearance, Verification, Export License, etc.		1.00
Cables		
Postage and Postals		
Preparing and handling draft, Completing Manufacturer's Invoices, Collection Letter credit		
Storage, Labor In and Out of Warehouse		
Air Mail		1.60
Advancing Ocean Freight and Charges		
Booking Stow Space		.50
Total Charges		26.45

#### TERMS CASH

The above items represent principally cash paid out for your account, and include our profit and compensation for our services rendered. Prompt remittance in New York funds is respectfully requested.

All shipments handled and charges billed subject to terms and conditions appearing on our Acknowledgment of Shipping Instructions for which has already been sent to you.